

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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FREDERICK J. HARRINGTON, JR.,

Plaintiff,

ORDER

- v -

CV-06-2900 ()(VVP)

ATLANTIC SOUNDING CO., INC., et al.,

Defendants.

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The plaintiff's motion to quash the defendants' request for a medical examination by a second medical expert is DENIED. The scheduling order requires advance identification only of case-in-chief experts, not rebuttal experts, and the defendants were thus under no obligation to identify rebuttal experts in advance of the deposition of the plaintiff's expert. The defendants are entitled to obtain an opinion from a neurologist in addition to an orthopedist in view of the testimony to be offered by the plaintiff's expert, who is a neurosurgeon. Moreover, it appears that treatment received by the plaintiff from a neurologist was not disclosed to the defendants which may require comment by a rebuttal neurologist. The defendants are within the deadlines for providing rebuttal expert disclosures and there is no indication that the defendants are seeking the further examination for purposes of harassment. That the plaintiff, who lives in Massachusetts, must come to this forum for the examination is an unavoidable consequence of his having chosen to bring the action here. In any event, the travel distance is not onerous, and the defendants were also required to travel to Massachusetts to participate in the deposition *de bene esse* of the plaintiff's expert there. The parties shall arrange a convenient date for the examination promptly.

SO ORDERED:

Viktor V. Pohorelsky

VIKTOR V. POHORELSKY
United States Magistrate Judge

Dated: Brooklyn, New York
January 5, 2009